

## § 232.201

## 17 CFR Ch. II (4–1–12 Edition)

section also may be a violation of the Computer Fraud and Abuse Act of 1986, as amended, and other statutes and laws.

[64 FR 27895, May 21, 1999]

### HARDSHIP EXEMPTIONS

#### § 232.201 Temporary hardship exemption.

(a) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing, other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter), a Form 5 (§ 249.105 of this chapter), a Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter), a Form TA-1 (§ 249.100 of this chapter), a Form TA-2 (§ 249.102 of this chapter), a Form TA-W (§ 249.101 of this chapter), a Form D (§ 239.500 of this chapter), an application for an order under any section of the Investment Company Act (15 U.S.C. 80a-1 *et seq.*), or an Interactive Data File (§ 232.11 of this chapter), the electronic filer may file the subject filing, under cover of Form TH (§§ 239.65, 249.447, 269.10 and 274.404 of this chapter), in paper format no later than one business day after the date on which the filing was to be made.

(1) An electronic imaged copy of the paper format document shall be the official filing for purposes of the federal securities laws.

(2) The following legend shall be set forth in capital letters on the cover page of the paper format document:

IN ACCORDANCE WITH RULE 201 OF REGULATION S-T, THIS (*specify document*) IS BEING FILED IN PAPER PURSUANT TO A TEMPORARY HARDSHIP EXEMPTION

(3) Signatures to the paper format document may be in typed form rather than manual format. See Rule 302 of Regulation S-T (§ 232.302). All other requirements relating to paper format filings shall be satisfied.

(4) If the exemption pertains to a document filed pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m and 78o(d)) or section 30 of the Investment Company Act and the paper format document is filed in the manner specified in paragraph (a) of this section, the filing shall be deemed to have been filed by its required due date.

NOTES TO PARAGRAPH (a): 1. Where a temporary hardship exemption relates to an exhibit only, the filer must file the paper format exhibit and a Form TH (§§ 239.65, 249.447, 269.10, and 274.404 of this chapter) under cover of Form SE (§§ 239.64, 249.444, 269.8, and 274.403 of this chapter).

2. Filers unable to submit a report within a prescribed time period because of electronic difficulties shall comply with the provisions of this section and shall not use Form 12b-25 (§ 249.322 of this chapter) as a notification of late filing.

(b) An electronic format copy of the filed paper format document shall be submitted to the Commission within six business days of filing the paper format document. The electronic format version shall contain the following statement in capital letters at the top of the first page of the document:

THIS DOCUMENT IS A COPY OF THE (*specify document*) FILED ON (*date*) PURSUANT TO A RULE 201 TEMPORARY HARDSHIP EXEMPTION

NOTE 1 TO PARAGRAPH (b): Failure to submit the confirming electronic copy of a paper filing made in reliance on the temporary hardship exemption, as required in paragraph (b) of this section, will result in ineligibility to use Forms S-2, S-3, S-8, F-2 and F-3 (*see* §§ 239.12, 239.13, 239.16b, 239.32 and 239.33 of this section, respectively), restrict incorporation by reference of the document submitted in paper (*see* Rule 303 of Regulation S-T (§ 232.303)), and toll certain time periods associated with tender offers (*see* Rule 13e-4(f)(12) (§ 240.13e-4(f)(12) of this chapter) and Rule 14e-1(e) (§ 240.14e-1(e) of this chapter)).

NOTE 2 TO PARAGRAPH (b): If the exemption relates to an exhibit only, the requirement to submit a confirming electronic copy shall be satisfied by refiling the exhibit in electronic format in an amendment to the filing to which it relates. The confirming copy tag should not be used. The amendment should note that the purpose of the amendment is to add an electronic copy of an exhibit previously filed in paper pursuant to a temporary hardship exemption.

(c) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and—

(1) Submission of an Interactive Data File (§ 232.11) as an exhibit as required pursuant to Rule 405 of Regulation S-T (§ 232.405), the electronic filer still can timely satisfy the requirement to submit the Interactive Data File in the following manner:

(i) Substitute for the Interactive Data File in the required exhibit a document that sets forth the following legend:

IN ACCORDANCE WITH THE TEMPORARY HARDSHIP EXEMPTION PROVIDED BY RULE 201 OF REGULATION S-T, THE DATE BY WHICH THE INTERACTIVE DATA FILE IS REQUIRED TO BE SUBMITTED HAS BEEN EXTENDED BY SIX BUSINESS DAYS; and

(ii) Submit the required Interactive Data File no later than six business days after the Interactive Data File originally was required to be submitted.

(2) Posting on its corporate Web site of an Interactive Data File as required pursuant to Rule 405 of Regulation S-T, the electronic filer still can timely satisfy the requirement to post the Interactive Data File by so posting the Interactive Data File within six business days after the Interactive Data File was required to be submitted to the Commission.

NOTE TO PARAGRAPH (c): Electronic filers unable to submit or post, as applicable, the Interactive Data File under the circumstances specified by paragraph (c), must comply with the provisions of this section and cannot use Form 12b-25 (§249.322 of this chapter) as a notification of late filing. Failure to submit or post, as applicable, the Interactive Data File as required by the end of the six-business-day period specified by paragraph (c) of this section will result in ineligibility to use Forms S-3, S-8 and F-3 (§§239.13, 239.16b, and 239.33 of this chapter) and constitute a failure to have filed all required reports for purposes of the current public information requirements of Rule 144(c)(1) (§230.144(c)(1) of this chapter).

[58 FR 14670, Mar. 18, 1993, as amended at 62 FR 36457, July 8, 1997; 68 FR 25799, May 13, 2003; 69 FR 22710, Apr. 26, 2004; 70 FR 43569, July 27, 2005; 71 FR 74708, Dec. 12, 2006; 73 FR 10616, Feb. 27, 2008; 73 FR 65525, Nov. 4, 2008; 74 FR 6813, Feb. 10, 2009; 74 FR 15667, Apr. 7, 2009; 76 FR 71876, Nov. 21, 2011]

#### § 232.202 Continuing hardship exemption.

(a) An electronic filer may apply in writing for a continuing hardship exemption if all or part of a filing, group of filings or submission, other than a Form ID (§§239.63, 249.446, 269.7, and 274.402 of this chapter) or a Form D (§239.500 of this chapter), otherwise to be filed or submitted in electronic for-

mat or, in the case of an Interactive Data File (§232.11), to be posted on the electronic filer's corporate Web site, cannot be so filed, submitted or posted, as applicable, without undue burden or expense. Such written application shall be made at least ten business days before the required due date of the filing(s), submission(s) or posting or the proposed filing, submission, or posting date, as appropriate, or within such shorter period as may be permitted. The written application shall contain the information set forth in paragraph (b) of this section.

(1) The application shall not be deemed granted until the applicant is notified by the Commission or the staff.

(2) If the Commission, or the staff acting pursuant to delegated authority, denies the application for a continuing hardship exemption, the electronic filer shall file or submit the required document or Interactive Data File in electronic format or post the Interactive Data File on its corporate Web site, as applicable, on the required due date or the proposed filing, submission, or posting date, or such other date as may be permitted.

(3) If the Commission, or the staff acting pursuant to delegated authority, determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of investors and so notifies the applicant, the electronic filer shall follow the procedures set forth in paragraph (c) of this section.

(b) The request for the continuing hardship exemption shall include, but not be limited to, the following:

(1) The reason(s) that the necessary hardware and software is not available without unreasonable burden and expense;

(2) The burden and expense involved to employ alternative means to make the electronic submission or posting, as applicable; and/or

(3) The reasons for not submitting electronically the document, group of documents or Interactive Data File or not posting the Interactive Data File, as well as the justification for the requested time period.

(c) If the request is granted with respect to: